

# Administering an Estate

This page is not an exhaustive review of Probate Law. It is intended to be a general guide to persons who have questions regarding Probate procedure. See your attorney for further details.

## Types of Probate

- Testate (will - see below)
- Intestate (no will - see below)
- Small Estate Affidavit - personal property valued at less than \$10,000 (no real estate)
- Will Filed Only (No assets to probate)

### ***Where can I obtain information on Wills?***

The South Carolina Bar has a free brochure which explains Wills and the legal requirements for a valid Will. The brochure can be accessed at:

<http://www.scbar.org/pdf/public/wills.pdf>

### ***What does it mean to "probate" a will?***

Probate means the Will is admitted as valid under South Carolina law. Informal probate admits the will as valid. Formal probate requires a hearing to confirm the validity of the will. If the will has erasures, white-out, or other markings, the Court requires a formal probate proceeding.

### ***What if the deceased did not have a will?***

When someone dies without a will, his or her estate is called "intestate". For intestate estates, State law spells out who inherits. There exists a common misperception that, if a person dies without a Will, the State of South Carolina takes all their property. This is not correct. If someone dies without a will and they are survived by a spouse and children, the spouse and children will split the estate equally with the spouse receiving half and the children splitting the other half. If the spouse died before the deceased person, the decedent's children will receive the entire estate. If the decedent never had children but was survived by a spouse, the spouse inherits the entire estate.

***What if the deceased got divorced after the preparing a Will that leaves everything to his spouse, but the deceased never changed his Will?***

For purposes of distributing property, the ex-spouse is treated as if she died before the decedent. This usually results in the property passing to the decedent's children or other heirs. However, anytime a person gets divorced, they should have an attorney examine their Will, Power of Attorney, and other personal documents to see how these documents need to be revised. While a divorce is pending or after a divorce, a person should review beneficiary designations on insurance policies, 401K's, and retirement accounts or plans, and joint accounts. These assets are most often non-probate assets which are not affected by and do not pass according to the decedent's Will.

### ***How do I know if I need to go through the Probate Court?***

If the decedent died owning property which was in the decedent's name, you need to go through the probate court in order to transfer title to that property. If the deceased was a permanent resident of Greenwood County, was a non-resident holding property in Greenwood County, or has a right to take legal action in this county, the estate must be processed through the Greenwood County Probate Court. If the decedent died without owning any property, but the decedent did have a Will, the law requires the will to be filed "For Record Only" with the Probate Court.

### ***Do I need an attorney to probate a Will?***

For formal probate or appointment, the services of an attorney are recommended. This requires the filing of a Summons/Petition/filing fee and then service of the pleadings on the interested parties. A hearing will then be set for presentation of the testimony. For an informal appointment or probate proceeding in a relatively simple estate, an attorney is usually not necessary. However, if there is the possibility of someone contesting the Will or if there is family discord or disagreement, seeking the services of an attorney is strongly advised. Also, if the Estate is taxable under federal law, the services of an attorney or an accountant should definitely be retained.

### ***When is an Estate subject to the estate tax?***

Estates are only subject to an estate tax if the gross amount of the decedent's assets exceeds the following schedule:

Date of Death	Gross Estate Value
1-1-2000 to 12-31-2001	\$675,000
1-1-2002 to 12-31-2003	\$1,000,000
1-1-2004 to 12-31-2005	\$1,500,000
1-1-2006 to 12-31-2007	\$2,000,000
1-1-2008 to 12-31-2009	\$3,500,000

For decedents who passed away after December 31, 2004, there is no South Carolina Estate Tax, regardless of the value of the Estate. However, federal estate taxes may be due if the gross value of the estate exceeds the above schedule.

The probate court ***strongly*** recommends retaining an estate attorney or a certified public accountant for any estates which are potentially taxable. Under federal and state law, the estate cannot be closed until the court is provided with an estate tax closing letter from the IRS

***I have been thinking of putting my property in a “living trust.” Is this a good idea?***

For most people, putting all your property in a “living trust” is a very bad idea, and one which they come to regret. Increasingly, members of the public being victimized by individuals selling “trust kits.” These kits are sold for hundreds or even thousands of dollars, and they profess to reduce one’s estate taxes, simplify or avoid probate, or accomplish some other objective. The salesperson tries to scare the individual into buying these kits by telling fictional horror stories about the cost of going through probate and estate taxes taking all their money. In truth, most people have no need for such trusts. Before purchasing one of these kits, please talk to your attorney about whether you really need to put your property in trust. If your financial or personal situation is such that a trust is advisable, your attorney can best assist you with preparing a trust that best meets your specific needs or desires. More information on the dangers these trust kits pose can be obtained at the following link through the South Carolina Bar Association: <http://www.scbar.org/pdf/public/trustkits.pdf>

***How does a Personal Representative get appointed?***

Appointment of a Personal Representative is granted informally to a person who has priority under South Carolina law. Usually, the Personal Representative is named in the will by the deceased. However, priority can result through the will, by law, by renunciation, or by termination. Any person with priority may nominate another. A person without priority may only be appointed through formal proceedings. Following service of the formal Summons/Petition, a hearing will be scheduled to determine who is the appropriate person to administer the estate.

***What are the duties of the Personal Representative?***

The Personal Representative is responsible for collecting, protecting, and administering the estate. This includes giving Notice to all interested parties, filing an Inventory of the estate, making sure assets are secure during probate

time, paying required claims and costs, and making sure the proper people get what they are entitled to receive.

### ***How are estates assigned to an estate supervisor?***

Estates are assigned based upon the decedent's last name.

For decedents whose last name begins with A-L, Janice Gentry will assist you. She may be reached at 942-8623.

For decedents whose last name begins with M-Z, Wendy Williams will assist you. She may be reached at 942-8624.

For conservatorships, guardianships, mental illness or chemical dependency issues, contact Kim Russell at 942-8622.

For marriage licenses, contact Sherlyn Lindley at 942-8625.

### ***How complicated is Probate?***

For most people, going through probate is a relatively simple process and the Greenwood Probate Court is able to assist the public with probating most estates. The probate process can generally be divided into three steps:

1. Filing of Will and the opening paperwork. The estate supervisor can assist you in filing the will and completing the forms necessary to open the estate. Once probate is opened, a notice to creditors is published requiring all of the decedent's creditors to file their claim with the court. If they do not file their claim, their claim can be barred after the passage of 8 months.
2. Gathering and accounting for assets. Three months after the estate is opened, the personal representative must file an Inventory of assets with the court. This Inventory lists all known assets belonging to the deceased at the time of their death. The estate supervisor can also assist with the preparation of this form.
3. Disbursing the assets. After passage of eight months, if no claims are filed or if any filed claims have been paid, the personal representative may proceed to distribute out any assets which have not been previously distributed. In almost all estates, there exist ways to distribute assets to the heirs prior to the expiration of the eight months if the should arises. The estate supervisor can also assist you with any questions and the necessary forms and instructions to distribute the assets. Once all heirs have acknowledged receipt of their inheritance, the court will close the estate.

Also, all probate forms needed to administer any estate are available online at <http://www.judicial.state.sc.us/forms/>. If you need assistance completing these forms, please contact the estate administrator assigned to your case.

### ***Where do I start and how much does all of this cost?***

If the decedent had a will (testate), within thirty (30) days from date of death, the personal representative named in the will should call the Probate Court for an appointment. The appropriate estate supervisor will instruct the personal representative as to what is needed for the first appointment. Every effort will be made to accommodate your request as soon as possible.

If the decedent did not have a will (intestate), next of kin should contact the Probate Court within thirty (30) days from date of death for an appointment. The appropriate estate supervisor will instruct you as to what is needed for the first appointment.

Filing fees and costs which are paid to the Probate Court are set by law for all estates.

### ***When is Bond required?***

Bond is required in the following circumstances:

- Appointment of a Special Administrator
- Appointment of a Personal Representative not named in the will (unless they are the sole devisee or unless waived by all interested heirs)
- Appointment of a Personal Representative of an intestate estate (unless they are the sole heir or all heirs consent to waive bond)
- Bond for the Personal Representative expressly required by the will
- If demanded by an interested person

Bond may be waived if all heirs and devisees sign an agreement to that effect.